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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 **Cung Le, Nathan Quarry, Jon Fitch, Brandon**
Vera, Luis Javier Vazquez, and Kyle
12 **Kingsbury, on behalf of themselves and all**
others similarly situated,

13 **Plaintiffs,**

14 **v.**

15 **Zuffa, LLC, d/b/a Ultimate Fighting**
Championship and UFC,

16 **Defendant.**
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No.: 2:15-cv-01045-RFB-BNW

PLAINTIFFS' RESPONSE TO
DEFENDANT ZUFFA, LLC'S MOTION
FOR LEAVE TO FILE SUPPLEMENTAL
AUTHORITY

1 Plaintiffs Cung Le, Nathan Quarry, Jon Fitch, Brandon Vera, Luis Javier Vazquez, and
 2 Kyle Kingsbury (“Plaintiffs”) submit this response to Defendant Zuffa, LLC’s (“Zuffa”) Motion
 3 for Leave to File a Notice of Supplemental Authority (ECF No. 803).

4 Zuffa seeks leave to file a Notice of Supplemental Authority, suggesting that the Ninth
 5 Circuit’s recent decision in *Olean Wholesale Grocery Co-Op v. Bumble Bee Foods LLC*, 9th Cir.
 6 No. 19-65614 (2021) (“*Olean*”), “confirms, and expounds on, the heavy burden that plaintiffs
 7 face in seeking certification of a class under Fed. R. Civ. P. Rule 23(b)(3), and confirms that
 8 certification of the putative classes in this case would be improper.” Def.’s Notice of Suppl.
 9 Authority (ECF No. 803-1), at 2. Zuffa’s reading of *Olean* is backwards. Two of its holdings are
 10 particularly relevant:

11 (1) Common Impact with 5 or 6% Uninjured Class Members. Plaintiffs can establish
 12 predominance by offering common evidence capable of showing only a *de minimis*
 13 percentage of class members were uninjured, such as only 5 or 6% as plaintiffs’
 expert opined, and not 28% as defendants’ expert opined. *Olean*, at 30-34.

14 (2) Resolving the Battle of the Experts. When there is a “battle of the experts,” *id.* at 33
 15 (citation omitted), on an issue critical to class certification, a trial court should assess
 “the experts’ competing testimony” and make a finding. *Id.* at 33-34.

16 Here, Plaintiffs submitted expert testimony establishing that at most about 1% of class members
 17 were uninjured. *See* Pls.’ Suppl. Br. in Support of Class Certification (ECF No. 744), at 5-6. In
 18 contrast, Zuffa offered *no expert testimony* suggesting that some higher percentage of class
 19 members was injured. *Id.* at 6-7. Instead, Zuffa’s experts claimed it is improper to use wage share
 20 *at all*—an argument on which all members of the proposed class would win or lose together,
 21 making it common to the class. *Id.* at 7; *Olean*, at 15 (quoting *Amgen, Inc. v. Conn. Ret. Plans &*
 22 *Tr. Funds*, 568 U.S. 455, 460 (2013)). True, Defendants’ *lawyers*—*not* their experts—belatedly
 23 and incorrectly speculated in one short paragraph that Dr. Singer’s methodology might not show
 24 harm to virtually all class members. *See* Def.’s Suppl. Br. in Opp. to Pls.’ Mot. for Class
 25 Certification (ECF No. 742), at 11. But lawyer speculation is *not evidence*. At class certification,
 26 not just plaintiffs, but defendants too must proffer *evidence*. Here, predominance comes down not
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1 to a battle of the experts, but to a battle between compelling expert testimony and no evidence at
2 all. Under *Olean*, then, the *evidence* supports a finding of predominance.

3 DATED: April 9, 2021.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April 2021 a true and correct copy of **PLAINTIFFS' RESPONSE TO DEFENDANT ZUFFA, LLC'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY** was served via the District Court of Nevada's ECF system to all counsel of record who have enrolled in this ECF system.

By: /s/ Pamela Montgomery
An employee of Kemp Jones, LLP